NATIONAL LABOR RELATIONS BOARD

Region 32
Ronald V. Dellums Federal Building & Courthouse
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

Telephone: 510/637-3300
FAX: 510/637-3315
Website: www.nlrb.gov
Region 32's E-Mail: region32@nlrb.gov

September 11, 2006

Laborers' International Union of North America, Local 169
570 Reactor Way
Reno, NV 89502

Michael E. Langton, Esq.
Law Offices of Michael E. Langton
801 Riverside Avenue
Reno, NV 89503

Re: United Rentals Highway Technologies
Case 32-RC-5340

Gentlepersons:

The petition in this matter seeking an election among certain employees of the Employer, United Rentals Highway Technologies, Inc., has been carefully investigated and considered.

***Decision to dismiss**:* Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing the petition for the following reasons:

The Petitioner filed the petition in this matter on April 18, 2005, seeking an election to establish itself as the Section 9(a) representative of a unit of the Employer's laborers and flaggers employed at the Employer's Reno, Nevada facility. At the time of the petition's filing, the employees at that facility were covered by a Section 8(f) agreement, which, as described in a December 12, 2000, addendum to that agreement, was between the Petitioner and the Employer's Reno Branch.

The investigation revealed that, on or about May 4, 2005, the Employer laid off all of the employees at its Reno branch and sold its Reno-based business to the Nevada Barricade and Sign Company, an established competitor of the Employer located in the Reno area. Thereafter, further processing of the petition was blocked by the filing of unfair labor practice charges in Case 32-CA-22050 and Case 32-CA-22377, alleging various violations of the Act by the Employer with respect to the closing of its Reno branch. Those cases have now closed, with only one of the unfair labor practice allegations having been found to have merit, namely, that the Employer violated Section 8(a)(1) and (5) of the Act by failing to bargain regarding the effects of the closing of its Reno branch. That allegation was resolved pursuant to a bilateral, informal settlement agreement, with the conditions of that agreement having since been satisfied.

In resuming the processing of the petition, I issued to the parties an Order to Show Cause on August 18, 2006, inviting their responses as to why the petition should not be dismissed in light of the evidence showing that the petitioned-for bargaining unit of Reno-based employees no longer exists. On August 28, the Petitioner submitted its Reply to the Order to Show Cause, wherein it argues that the petition should not be dismissed because, as it asserts, the Employer has not ceased doing work in northern Nevada. Having considered the Petitioner's arguments, I find for the reasons that follow that the Petitioner has failed to show good cause as to why the petition should not be dismissed in light of the Employer's discontinuation of its Reno-based operations.[1]

In arguing that the petition should not be dismissed, the Petitioner contends that the Employer has not ceased doing work in northern Nevada, because, as the Petitioner asserts, the Employer continues to perform such work through its Las Vegas branch. However, the Petitioner makes no claim that the Employer's own employees have continued to perform such work. Rather, the Petitioner relies on the fact that, in November 2005, the Employer's Las Vegas branch was awarded a statewide contract to provide signs and other services to the State of Nevada, and that the Employer thereafter subcontracted the northern Nevada portion of the bid award to Nevada Sign and Barricade--the entity that had previously purchased the assets of the Employer's Reno branch.

The subcontracting of that work to Nevada Sign and Barricade had prompted the Petitioner to file the charge in Case 32-CA-22377-1, wherein the Petitioner contended (1) that the Employer had closed its Reno branch in order to avoid a union obligation and (2) that the Employer continued to do business in northern Nevada through Nevada Sign and Barricade as an alter ego. However, the investigation of those allegations disclosed that the Employer sold its northern Nevada operations for legitimate business reasons. Thus, the evidence showed that the Employer's northern Nevada operation was losing significant amounts of money and that the Employer concurrently sold several other money-losing operations, as well—many of which were not unionized. The evidence also showed that, prior to the Employer's sale of its Reno assets, Nevada Sign and Barricade had been a competitor of the Employer for business in the northern Nevada area, and that negotiations over the sale began in November 2004, well before the Union's May 2005 petition. As part of that transaction, the Employer signed an agreement not to compete with Nevada Sign and Barricade regarding work in northern Nevada.

As regards the Petitioner's alter ego contention, there was no evidence of common ownership, common business addresses, commingling of assets, or any other indication that the Employer and Nevada Sign and Barricade were anything other than distinct, competing enterprises. Moreover, the Employer's decision to subcontract the northern Nevada portion of its contract with the State of Nevada to Nevada Sign and

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[1] Although the Petitioner failed to comply with the Order to Show Cause's August 25 response deadline, I nonetheless have decided, based on the justifications set forth in the Petitioner's Reply, to regard that Reply as timely.

Barricade appears to have been the result of arm's-length negotiations between the two companies, which were driven (1) by the need of the Employer's Las Vegas branch to obtain someone to perform the necessary work in northern Nevada and (2) by the non-compete clause in the Employer's sales agreement with Nevada Sign and Barricade.

In its Reply to the Order to Show Cause, the Petitioner argues that the Employer remains signatory to the Section 8(f) collective-bargaining agreement that covered the Employer's Reno branch employees. More specifically, the Petitioner asserts that the northern Nevada work awarded to the Employer's Las Vegas branch was subject to the subcontracting clause of the Section 8(f) agreement. However, even assuming that the Employer's subcontracting of the northern Nevada work at issue here was subject to such a contractual provision and assuming, further, that the Employer failed to comply with that provision, the remedy for such a contractual violation would not be for the Employer to resume its Reno operations. Thus, the Petitioner's argument fails to address the dispositive circumstance of this case, namely, that the Employer has not had any employees in the petitioned-for unit since May 2005 and does not appear likely to have such employees in the foreseeable future.

In any event, it does not appear that the Employer's Las Vegas branch was subject to the Section 8(f) agreement covering the Reno branch employees. Thus, the collective-bargaining agreement to which the Petitioner claims the Employer remained bound, namely, a short form ("me too") agreement signed in December 2000, which bound the Employer to the Northern Nevada AGCA contract, was amended by subsequent documents that identified the contracting parties as the Union and "the Reno Branch of United Rentals Highway Technologies Inc."[2] No such agreements were entered into with respect to the Employer's Las Vegas branch.

In sum, based on the foregoing, I find that the petitioned-for unit no longer exists, and I further find that the Petitioner has failed to show good cause as to why, in light of that circumstance, the petition should not be dismissed. Accordingly, given the absence of any employees in the petitioned-for bargaining unit, there is no question concerning representation, and the petition is therefore dismissed.

Your Right to Obtain a Review of Dismissal Action: Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing an appeal with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC, 20570-00001. A copy of such appeal must be served upon each of the parties to the proceeding, including the undersigned.

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[2] See, for example, the addendum to the Master Agreement between the parties that was signed on December 12, 2000.

Request of Review Due Date: The request for review must be received by the Executive Secretary for the Board by the close of business at 5:00 p.m., EDT on September 25, 2006. However, if you mail the request for review, it will be considered timely if it is postmarked no later than the day before the due date.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

Extension of Time to File Request for Review: Upon good cause, the Board may grant special permission for a longer period within which to file a request for review. If you a request for extension of time with the Executive Secretary in Washington, you must send a copy of your request to the other parties to this proceeding and to me.

Request of Review Contents: The request for review must contain a complete statement setting forth the facts and the reasons that support your request for review of the decision to dismiss the petition. The request for review and any request for extension of time must include a statement that a copy has been served on the other parties this proceeding and on me and that service has been accomplished in the same or faster manner as that used to serve the Board.

Very truly yours,

/s/ Alan B. Reichard
Alan B. Reichard
Regional Director

cc:

Dick Hall
United Rentals Highway Technologies
1120 Terminal Way
Reno, NV 89502

Joseph B. Cartafalsa, Esq.
Putney, Twombly, Hall & Hirson, LLP
521 Fifth Avenue
New York, NY 10175

Office of the Executive Secretary
Mildred Wright
National Labor Relations Board
1099 – 14th Street, N.W.
Washington, DC 20570-0001